UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ALEXA BRENNEMAN,	:	Case No. 1:14-CV-00136
	:	
Plaintiff,	:	Judge Michael R. Barrett
	:	
v.	:	
	:	**JOINT MOTION FOR PRELIMINARY**
CINCINNATI BENGALS, INC.,	:	**APPROVAL OF SETTLEMENT**
	:	**AGREEMENT AND ORDER**
Defendant.	:	**SCHEDULING FAIRNESS HEARING**
	:	

Plaintiff Alexa Brenneman and Defendant Cincinnati Bengals, Inc. respectfully move this Court for an order:

(1) Adopting the following Rule 23 class definition agreed to by the parties: all persons who were employed by the Bengals as Ben-Gal cheerleaders at any time from February 11, 2011 through January 31, 2014;

(2) Conditionally certifying the Rule 23 class for purposes of settlement and appointing class counsel;

(3) Preliminarily approving the Settlement Agreement agreed upon and executed by the parties on August 21, 2015, attached hereto as Exhibit A, for the purpose of providing notice thereof;

(4) Setting a hearing date to determine the fairness, reasonableness, and adequacy of the Settlement Agreement, and to consider class counsel's application for attorney fees; and

(5) Approving dissemination of the notice attached as Exhibit B to members of the class to advise them of class certification, class member objection and opt-out rights, the terms of the proposed settlement, and the settlement approval process.

Respectfully submitted,

/s/ Todd B. Naylor
Jeffrey S. Goldenberg (0063771)
Todd B. Naylor (0068388)
Goldenberg Schneider, LPA
One West Fourth Street, 18th Floor
Cincinnati, OH 45202
Telephone: 513.345.8291
Facsimile: 513.345.8294
jgoldenberg@gs-legal.com
tnaylor@gs-legal.com

Christian A. Jenkins (0070674)
Minnillo & Jenkins, Co. LPA
2712 Observatory Avenue
Cincinnati, OH 45208
Telephone: 513.723.1600
Facsimile: 513.723.1620

Attorneys for Plaintiff

/s/ Justin D. Flamm
W. Stuart Dornette (0002955)
Justin D. Flamm (0071575)
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
Telephone: 513.381.2838
Facsimile: 513.381.0205
dornette@taftlaw.com
flamm@taftlaw.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via the Court's CM/ECF system this 26 day of August, 2015, which will provide notice to all counsel of record.

/s/ Todd B. Naylor
Todd B. Naylor

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ALEXA BRENNEMAN, et al.	:	Case No. 1:14-CV-00136
Plaintiffs,	:	Judge Michael R. Barrett
v.	:	
CINCINNATI BENGALS, INC.,	:	**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT AND ORDER SCHEDULING FAIRNESS HEARING**
Defendant.	:	

I. STATEMENT OF THE CASE

A. Status of the Litigation Prior to Proposed Settlement

Plaintiff Alexa Brenneman ("Brenneman") filed this lawsuit in February 2014 claiming that her pay as a Ben-Gal cheerleader for Defendant Cincinnati Bengals, Inc. (the "Bengals") during the 2013 National Football League ("NFL") season fell below the minimum wage as provided under the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*. ("FLSA") and Ohio law, Article II, Section 34a of the Ohio Constitution ("§ 34a") and Ohio Revised Code § 4111.01 *et seq*. Brenneman also asserted constitutional, statutory, and common law claims related to wage payments and recordkeeping. (Complaint, Dkt. #1) The Bengals have denied and continue to deny any liability or wrongdoing with respect to the alleged facts and causes of action asserted in the lawsuit.

Brenneman sued on her own behalf, on behalf of other similarly situated employees pursuant to the FLSA, and as class representative for a putative class under Fed. R. Civ. P. 23. (Complaint, Dkt. #1) The Bengals responded to her Complaint by filing a Partial Motion to Dismiss (Dkt. #3) and an Answer (Dkt. #4) in April 2014. Rather than respond to the Bengals' Motion, Brenneman filed an Amended Complaint (Dkt. #5), to which the Bengals responded by

filing another Partial Motion to Dismiss (Dkt. #6) and an Answer (Dkt. #7) in May 2014. The gravamen of the Bengals' Partial Motion to Dismiss was that Rule 23 class relief was not available to Brenneman in this case. According to the Bengals, a plaintiff seeking to recover minimum wages may not proceed directly under § 34a, but must instead assert a claim pursuant to the statute that purports to implement § 34a, Ohio Rev. Code § 4111.14(K). The reason the Bengals made this argument is that Ohio Rev. Code § 4111.14(K)(2) requires that in any action brought under that section, an employee wishing to join the suit as a "party plaintiff" must "first give[] written consent." § 34a, in contrast, contains no such language.

At the time this case was filed, no court had directly resolved the question of whether a plaintiff was entitled to bring a Rule 23 class action under § 34a. Therefore, out of an abundance of caution, Plaintiff pleaded an alternative claim for unpaid minimum wages under Ohio Rev. Code § 4111.14 in the event that this Court were to find that she could not proceed directly under § 34a. Furthermore, Brenneman gave notice that if the Court found that Ohio Rev. Code § 4111.14 applied to her claims so as to limit the rights available to her under §34a, she intended to seek a declaration that Ohio Rev. Code § 4111.14 is unconstitutional. Brenneman filed her Memorandum in Opposition (Dkt. #10) to the Bengals' Motion on June 4, 2014, and the Bengals filed their Reply Memorandum on June 27, 2014. (Dkt. #13).

While the Bengals' Motion to Dismiss was pending, on August 6, 2014, Brenneman moved for conditional certification of an opt-in class pursuant to 29 U.S.C. § 216(b) and Ohio Rev. Code § 4111.14 and/or § 34a. (Dkt. #16) The Bengals advised the Court the same day that they did not oppose the motion. (Dkt. #17) On August 11, 2015, the Court granted the motion and directed that notice issue to the opt-in class. (Dkt. #18) Following the 60-day period

ordered by the Court for members of the opt-in class to file consent forms if they wished to join the case as party plaintiffs, six former Ben-Gals filed consents and joined the case.

On October 21, 2014, this Court issued an Order denying the Bengals' Partial Motion to Dismiss "on the merits." (Dkt. #24, p. 10). Specifically, this Court held that Plaintiff's allegations pertaining to a class action under Rule 23 need not be dismissed, as "they may properly be maintained in accordance with her claims brought directly under Article II, § 34a." *Id.* Shortly thereafter, on November 7, 2014, Brenneman moved to certify a class pursuant to Fed. R. Civ. P. 23. (Dkt. #27) As the Parties engaged in additional discovery and committed to conducting Court-facilitated settlement negotiations, the Court stayed briefing on that motion. (Nov. 24, 2014 Minute Entry)

B. Settlement Negotiations

As a result of the detailed payment information and related records produced in discovery, the Parties were prepared for the Court-facilitated settlement conferences that began on December 30, 2014. (Dec. 30, 2014 Minute Entry) Prior to the first such settlement conference, Brenneman and the Bengals prepared and provided to the Court detailed mediation statements that set forth their respective positions.

An additional settlement conference was held with the Court on January 21, 2015. (Jan. 21, 2015 Minute Entry) Thereafter, the Parties continued their negotiations informally, both with the Court's continued assistance and in a series of direct communications among opposing counsel.

Though settlement negotiations were at all times adversarial, the Parties eventually reached a settlement in principle. The terms of that settlement were memorialized in a term

sheet exchanged between opposing counsel, which served as the basis from which the Settlement Agreement (attached as Exhibit A) was prepared.

C. Principal Terms of The Proposed Settlement

The Parties negotiated at arms-length the precise language and specific terms of the Settlement Agreement. This Settlement Agreement is thus the result of the extensive and vigorously contested negotiations between Brenneman's counsel and the Bengals' counsel, both of whom have substantial experience in litigating FLSA and class actions.

1. Relief to the Settlement Class

The Parties ask the Court to certify a settlement class defined as **all persons who were employed by the Bengals as Ben-Gal cheerleaders at any time from February 11, 2011 through January 31, 2014** (the "Settlement Class"), and to appoint Brenneman as class representative. The Parties likewise ask the Court to appoint the law firms of Goldenberg Schneider, LPA (and attorneys Jeffrey S. Goldenberg and Todd B. Naylor in particular) and Minnillo & Jenkins Co., LPA (and attorney Christian A. Jenkins in particular) as Class Counsel. Brenneman incorporates her November 7, 2014 motion to certify class and appoint class counsel (Dkt. #27) as the basis for certification of this Settlement Class, and the Bengals consent to certification of such class for settlement purposes.

Each member of the proposed Settlement Class who does not opt out of this Settlement will receive a payment from the Bengals calculated as follows: for each covered NFL season during which a Class Member worked for the Bengals as a Ben-Gal cheerleader, the Bengals will pay that Class Member the gross amount of two thousand five hundred dollars ($2,500.00). Thus, for example, if a Class Member worked for the Bengals as a Ben-Gal cheerleader during

three (3) NFL seasons, that Class Member would receive payment in the gross amount of seven thousand five hundred dollars ($7,500.00).

The Parties agree that, based on records supplied by the Bengals, during the relevant period covered by the Class, the sum of the NFL seasons during which all individual Class Members combined worked for the Bengals as Ben-Gal cheerleaders is one hundred and two (102). Thus, the total gross amount of payments under the Settlement Agreement, not including any incentive award or attorney fees that may be awarded by the Court, is two hundred fifty-five thousand dollars ($255,000.00).

The amounts payable to any Class Members who opt out of the proposed settlement will be distributed pro rata to the remaining Class Members based on seasons worked. However, if Class Members who opt out of the proposed settlement represent six (6) or more of the one hundred and two (102) NFL seasons during which all individual Class Members combined worked for the Bengals as Ben-Gal cheerleaders during the 2011-2013 NFL seasons, then the Bengals shall have the option (at the Bengals' sole discretion) of voiding and cancelling the proposed settlement altogether. The Bengals may exercise this contingent option by providing notice to the Court and to counsel for the putative class within ten (10) business days of the end of the opt-out period.

For example, if two (2) class members who were each Ben-Gal cheerleaders for two (2) NFL seasons filed opt-out notices, the Bengals' option to cancel the proposed settlement would not become effective; however, if two (2) class members who were each Ben-Gal cheerleaders for three (3) NFL seasons filed opt-out notices, the Bengals' option to cancel this proposed settlement would become effective.

In the event the Bengals exercise this contingent option to cancel the proposed settlement, the proposed settlement will be of no effect, the Settlement Class will be dissolved, and the parties will resume litigation of this dispute, with all parties reserving all rights as to the prosecution and defense of the claims in the case and the propriety of class treatment under Fed. R. Civ. P. 23.

Both Parties agree that neither they nor their counsel will solicit, encourage, or seek to induce any Class Member to opt out of this settlement.

All settlement payments shall be treated as wages. The Bengals will pay all employer payroll taxes and related employer contributions, will process all associated withholdings, and will report such payments using IRS form W-2.

These settlement payments shall be sent directly to the Class Members via first class mail through the United States Postal Service, postage pre-paid. Payment checks shall be valid for ninety (90) days from the date of mailing. If any payment checks are unclaimed, returned, or uncashed after that ninety-day period, those checks will be cancelled at the Bengals' expense. In such event, should the total gross dollar amount of unclaimed, returned, and/or uncashed checks be five thousand dollars ($5,000.00) or more, the total gross dollar amount of unclaimed, returned, and/or uncashed checks shall then be redistributed among the other Class Members in equal shares as wages with any remaining uncashed or unclaimed amounts being paid to a nonprofit organization selected by Brenneman subject to the Court's approval; should the total gross dollar amount of unclaimed, returned, and/or uncashed checks be less than five thousand dollars ($5,000.00), the total gross dollar amount of unclaimed, returned, and/or uncashed checks shall then be paid to a nonprofit organization selected by Brenneman, subject to the Court's approval.

2. Attorneys' Fees and Costs

Prior to the Fairness Hearing, Brenneman's counsel will petition the Court for a reasonable award of attorney fees and cost reimbursement. Attorney fees and cost reimbursement will be paid separately by the Bengals, and such payment shall not affect or diminish the payments being made to Class Members.

3. Incentive Payment to the Named Plaintiff

Class Counsel will also ask the Court to award an incentive payment of five thousand dollars ($5,000.00) to be made to Brenneman by the Bengals, in recognition of the contributions she made toward this litigation.

4. Notice to Class Members and Opt-in Plaintiffs of Settlement

Within seven (7) days of the date of entry of the Preliminary Approval Order or such other time as ordered by the Court, the Bengals or the Notice Administrator shall mail to the Class Members and Opt-in Plaintiffs, by first class United States mail, the *Notice To Class Members Regarding The Settlement Of The Class Action and Collective Action and Notice Of Hearing On Proposed Settlement* (the "Notice") in the form attached as Exhibit B or in such modified form as ordered by the Court. The Notice will inform the Class Members and the Opt-in Plaintiffs of their rights under the Settlement, including the ability to opt out and object. Any Class Member who does not opt out and is otherwise eligible will receive a settlement payment as provided in the Settlement Agreement.

(a). Opting Out. Any Class Member or Opt-in Plaintiff may request exclusion from the Settlement by submitting a signed opt-out letter to Counsel for the Parties that includes their name, current mailing address, and a statement indicating that she wants to opt out or be excluded from the settlement. To be effective, such opt-out letters must be sent via first class United States mail to the addresses provided in the Notice and postmarked by the date

specified on the Notice, which will be forty-five (45) calendar days after the Bengals or the Notice Administrator makes the initial mailing of the Notice (the "Opt-Out Period"). Counsel for the Bengals shall retain documents indicating the postmark date of each opt-out letter received and stamp the date received on the original of each opt-out letter that it receives. Counsel for the Bengals shall also, within three (3) business days after the end of the Opt-Out Period, file with the Clerk of Court for the United States District Court for the Southern District of Ohio stamped copies of any opt-out letters, redacting any social security numbers or other personal or sensitive information that may have been included in any such letter (*e.g.*, birth dates).

(b). Objections. Class Members or Opt-in Plaintiffs who wish to present objections to the proposed settlement at the Settlement Hearing must do so first in writing. To be considered, such objections must be filed with the Clerk of Courts for the United States District Court for the Southern District of Ohio by a date to be specified on the Notice, which shall be forty-five (45) days after the initial mailing of the Notice. The objection must also be mailed to counsel for the Parties, postmarked by the date specified in the Notice. The objection must be signed by the Class Member or Opt-in Plaintiff or her attorney and must contain the objector's name, current address, and the specific reasons why she objects to the Settlement (including any legal authorities). The objection must also state whether the objector and/or her attorney intends to appear at the Fairness Hearing, and if so, contain any legal support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection, as well as identify any documents she will seek to introduce or witnesses she intends to call at the Fairness Hearing.

The Parties may file with the Court written responses to any filed objections not later than seven (7) days before the Fairness Hearing.

5. Release

Upon entry of the final judgment and order granting approval of this settlement, Brenneman, the Opt-in Plaintiffs, and each Class Member who does not validly and timely opt out of the settlement will forever and fully release and discharge the Bengals and the other releasees (fully defined as the "Bengals Releasees" in the Settlement Agreement) from any and all "Released Claims." "Released Claims" is defined in the Settlement Agreement to mean all claims, known or unknown, by Brenneman, all Opt-in Plaintiffs, and all Class Members, for any type of relief against the Bengals Releasees for declaratory relief, wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorney fees, litigation costs, or any other monetary remedy, as well as injunctive relief, restitution, or other equitable relief related to or arising out of the claims set forth in the Amended Complaint at any time from February 11, 2011 through January 31, 2014 related to the Ben-Gals cheerleader program.

6. Fairness Hearing

The Parties will seek an expeditious Fairness Hearing consistent with the Court's docket and the schedules of counsel. No later than 14 days prior to the Fairness Hearing, Class Counsel shall submit a motion for final approval of the settlement. At the Fairness Hearing, the Parties will jointly request that the Court enter the judgment and order granting approval of settlement. If the Court does not approve the Settlement Agreement or approves it subject to conditions or modifications which are not acceptable to either party (other than the amount of attorney fees and costs to be paid to Class Counsel, which shall have no effect on the validity or enforceability

of this Agreement), the Parties shall attempt to negotiate in good faith in order to modify the Settlement Agreement in a form acceptable to both Parties and the Court.

II. LEGAL ANALYSIS SUPPORTING PRELIMINARY APPROVAL

A. This Settlement Meets The Standards Governing Approval Of FLSA And Rule 23 Class Action Settlements

"The proper procedure for obtaining court approval of the settlement of FLSA claims is for the parties to present to the court a proposed settlement, upon which the district court may enter a stipulated judgment only after scrutinizing the settlement for fairness." *Gentrup v. Renovo Servs., LLC*, 2011 WL 2532922, at *2 (S.D. Ohio June 24, 2011) (citing *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352–53 (11th Cir.1982)).

With regard to the standards for consideration in determining whether a proposed class action settlement is "fair, reasonable, and adequate" as required by Fed. R. Civ. P. 23(e)(2), Judge Black further noted in *Gentrup*:

> The Sixth Circuit has identified a number of factors to aid the court in determining whether a class action settlement is "fair, reasonable and adequate." These factors are also considered in determining whether the settlement of FLSA claims is "fair and reasonable." The factors cited by the Circuit include: (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery completed; (4) the likelihood of success on the merits; (5) the opinion of class counsel and representatives; (6) the reaction of absent class members; and (7) public interest in the settlement.
>
> The court may choose to consider only factors that are relevant to the settlement at hand and may weigh particular factors according to the demands of the case. In certain cases, a court may consider each factor individually. "More often, however, inquiry into one factor necessarily overlaps with inquiry into another."

Gentrup, 2011 WL 2532922 at *2-3 (citations omitted). And "[t]he settlement of class actions is generally favored and encouraged." *Franks v. Kroger Co.*, 649 F.2d 1216, 1224 (6th Cir. 1981).

B. The Settlement Agreement Should Be Preliminarily Approved Because It Is Fair, Reasonable, And Adequate

In evaluating whether a proposed settlement merits court approval, "[t]he ultimate question is whether the plaintiffs are better served if the litigation is resolved by the settlement rather than pursued. The Court is not required to determine if the settlement is the fairest possible resolution of the claims of each plaintiff, but rather whether the settlement taken as a whole is fair, adequate, and reasonable." *Gentrup*, 2011 WL 2532922 at *3.

1. There is no evidence that the settlement was tainted by fraud or collusion

This case was actively and vigorously litigated by both sides. The Parties engaged in a contentious and lengthy settlement negotiation that was facilitated by the Court. There is nothing whatsoever to suggest fraud or collusion here.

2. Absent a settlement, this case will likely continue for an extended period of time and require the expenditure of substantial resources

The second factor for the Court to consider is the complexity, expense, and likely duration of litigation. This factor also favors approval of the proposed Settlement Agreement. This case is comprised of one named plaintiff, six Opt-in Plaintiffs, and 49 total Class Members, each with her own work history. It would take many months to conduct written discovery and depose the Opt-in Plaintiffs and certain other Class Members if this litigation were to continue toward summary judgment or trial. Moreover, Class Counsel would seek to depose a significant number of Bengals employees and other witnesses affiliated with the Bengals and the Ben-Gals cheerleader program.

After completion of this factual discovery, the Bengals would likely seek to decertify the opt-in class through written motion and would oppose the motion for certification of a Rule 23 class. Even if Brenneman were successful and was able to maintain her claims past the anticipated motion for summary judgment, Brenneman would still need to prove at trial that the Bengals violated the FLSA and Ohio law and establish damages for herself as well as the Opt-in

Plaintiffs and Class Members. Accordingly, absent this settlement, a lengthy process with numerous uncertainties would be required before any Class Members could hope to receive any compensation whatsoever.

3. Substantial discovery was completed prior to settlement

When reviewing the proposed Settlement Agreement, the Court should also consider the stage of the current litigation and the amount of discovery that the Parties completed. As discussed above, the present case involved significant formal and informal discovery, and a substantial amount of information and documentation was exchanged in connection the Court-facilitated settlement negotiations.

Further, the proposed Settlement Agreement is the product of a lengthy negotiation process with the active involvement of an experienced and highly effective judicial officer. As a result, this factor counsels in favor of approval of the proposed Settlement Agreement.

4. The likelihood of success balanced against the amount and form of relief offered by the proposed settlement agreement weigh in favor of approving the settlement

In any FLSA settlement, "[t]he ultimate question is whether the plaintiffs are better served if the litigation is resolved by the settlement rather than pursued." *Gentrup*, 2011 WL 2532922 at *3. Here, Brenneman, the Opt-in Plaintiffs, and the Class Members are better off with a settlement now. Without a settlement, they risk years of litigation that could result in a zero recovery. Furthermore, they will receive real economic benefits from this settlement.

Moreover, this is not a case in which the Plaintiffs allege that they were misclassified as ineligible for overtime, or where a single task was always and systematically uncompensated by an employer (such as donning protective gear). Instead, this case requires individual testimony

to establish that each Ben-Gal cheerleader worked hours for which she was not paid at least minimum wage.

Nor is the relief being afforded negligible. Each class member will receive a gross payment of at least two thousand five hundred dollars ($2,500.00), and numerous Class Members will receive gross payments as high as seven thousand five hundred dollars ($7,500.00). Accordingly, the substantial relief obtained now weighs in favor of approving the Settlement Agreement.

5. The judgment of experienced trial counsel weigh in favor of approving the settlement

The next factor for consideration is the professional judgment of the experienced trial counsel participating in this litigation. When "[b]oth Plaintiffs' and Defendants' counsel believe that the settlement is fair and reasonable, [that] weighs in favor of approving the settlement." *Gentrup, LLC*, 2011 WL 2532922 at *3.

After carefully weighing all the evidence, counsel for Brenneman and the Bengals have each independently determined that the proposed settlement is in the best interest of their clients. This factor again militates in favor of approval of the Settlement Agreement.

6. The reaction of opt-in plaintiffs weigh in favor of approving the settlement

This factor is more appropriately considered once the Opt-in Plaintiffs and the Class Members receive the Notice and have the opportunity to stay in the settlement and collect their settlement payment, stay in the settlement and object to its terms, or opt-out of the settlement. Because notice has not yet been sent, this factor does not weigh for or against the settlement at this time.

7. The public interest weighs in favor of approving the settlement

The public interest generally favors the resolution of litigation, including FLSA actions, through compromise. *See Dillworth v. Case Farms Processing, Inc.*, 2010 WL 776933, at *6 (N.D. Ohio Mar. 8, 2010) ("[T]he certainty and finality that comes with settlement also weighs in favor of a ruling approving the agreement. Likewise, such a ruling promotes the public's interest in encouraging settlement of litigation.") *See also Stotts v. Memphis Fire Dept*., 679 F.2d 541, 555 n.11 (6th Cir. 1982) ("[S]ettlement agreements should ... be upheld whenever equitable and policy considerations so permit. By such agreements are the burdens of trial spared to the Parties, to other litigants waiting their turn before overburdened courts, and to citizens whose taxes support the latter. An amicable compromise provides the more speedy and reasonable remedy for the dispute."), *rev'd on other grounds*, 467 U.S. 561 (1984). In this case, the proposed settlement is in the best interests of these Ben-Gal cheerleaders and the public and should be approved.

C. The Proposed Notice Satisfies Rule 23(e)(1)

Before approving a proposed settlement agreement, the Court must "direct notice in a reasonable manner to all class members who would be bound" by the settlement. Fed. R. Civ. P. 23(e)(1)(B). The notice should be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Int'l Union v. General Motors Corp.*, 497 F.3d 615, 629-30 (6th Cir. 2007). The proposed Notice satisfies this requirement. It accurately summarizes the material terms of the proposed settlement and provides information about Class Members' rights to object or opt-out and the procedures to be followed if they wish to do so. The proposed Notice will be issued to

each individual Class Member by first class United States mail, so the Parties believe each Class Member will receive actual notice of the proposed settlement.

D. Conditional Certification Is Appropriate Because The Requirements Of Rule 23(a) And 23(b)(3) Are Satisfied

As noted above, Brenneman incorporates her November 7, 2014 motion to certify a class and appoint class counsel (Dkt. #27) as the basis for conditional certification of this settlement class. That motion sets forth the reasons that Brenneman has satisfied the requirements of Rule 23(a) and 23(b)(3). The Bengals consent to certification of such class for settlement purposes.

III. CONCLUSION

Based upon the foregoing, the Parties respectfully move the Court for an order preliminarily approving this Settlement, including the form and manner of notice, as submitted. The Parties further request this Court set a Fairness Hearing in accordance with the time frames specified in the Settlement Agreement and herein. A proposed Order granting the requested relief is provided for the Court's convenience as Exhibit C hereto.

Respectfully submitted,

/s/ Todd B. Naylor
Jeffrey S. Goldenberg (0063771)
Todd B. Naylor (0068388)
Goldenberg Schneider, LPA
One West Fourth Street, 18th Floor
Cincinnati, OH 45202
Telephone: 513.345.8291
Facsimile: 513.345.8294
jgoldenberg@gs-legal.com
tnaylor@gs-legal.com

Christian A. Jenkins (0070674)
Minnillo & Jenkins Co., LPA
2712 Observatory Avenue
Cincinnati, OH 45208

/s/ Justin D. Flamm
W. Stuart Dornette (0002955)
Justin D. Flamm (0071575)
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
Tel: 513.381.2838
Fax: 513.381.0205
dornette@taftlaw.com
flamm@taftlaw.com

Attorneys for Defendant

Telephone: 513.723.1600
Facsimile: 513.723.1620

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via the Court's CM/ECF system this 26 day of August, 2015, which will provide notice to all counsel of record.

/s/ Todd B. Naylor